IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17893 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKBHAI MANUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17893 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No.1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 13/02/2004

ORAL JUDGEMENT

1. Ms.Paurami Sheth, learned AGP for respondent no.1

and 2 and Ms.P.J.Davawala, learned Additional Counsel for the Central Government have placed on record the affidavit in replies. Same are kept on record.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the detention order dated 3.12.2003 (Annexure-A) passed by respondent no.2 and prays for quashing and setting aside of the said detention order and setting the petitioner at liberty.

3. The grounds of detention dated 3.12.2003 (Annexure-B) suggest that one complaint was received by the District Supply Officer, Bharuch in respect of illegal activities pertaining to solvent, kerosene and adulteration of the same and hence, the staff of the District Supply Officer carried out investigation on 27.5.2003 at the land bearing Survey No.846 situated at Kalak, Taluka - Jambusar, owned by one Shri Dinubhai Kishorbhai Patel. During the investigation, 6 tankers mentioned in the detention order as well as in the grounds of detention were found with lids open along with pipe inserted and electric motor which amounts to serious illegalities and as a result, stock worth Rs.28,64,281/and the tankers were seized on 28.5.2003. Thereafter, detailed investigation was carried out. The statements of the drivers of the concerned tankers were recorded. That an inquiry was also made with concerned RTO Office in respect of the names of the owners of respective tankers.

In the analysis report of Forensic Science Laboratory (for short "FSL"), it was found that the seized stock of SBP solvent, benzene and kerosene can be used as patrol after mixing. That seized tanker containing benzene and kerosene were found inter connected by pipes with lids open along with electric motors.

4. The petitioner was also prosecuted under the provisions of Sections 3 and 7 of the Essential Commodities Act. The petitioner was thereafter pursuant to the detention order (Annexure-A), has been taken under preventive detention by the authority concerned.

5. Mr.Prajapati, learned advocate for the petitioner has contended that the order of detention is liable to be quashed and set aside for the reasons that the petitioner has not been supplied with the copies of the bail application and the order passed by the Criminal Court releasing the petitioner on bail with respect to the

offences registered at C.R.No.1 of 2002 with Jambusar Police Station. It is further contended that though it is mentioned at Page-35 and though all the documents are being supplied and also reference made in the index at Page-39 at Serial No.44, copy of the bail order is stated to have been supplied but, in fact, the copy of the bail order has not been supplied.

6. In this regard, reliance has been placed on the decision reported in the case of Abdul Sathar Ibrahim Manik Vs. Ibrahim Shareef M. Madhafushi, AIR 1991 SC 2261. In Para.12, the Apex Court has observed that, having regard to the various above-cited decisions on the points often raised we find it appropriate to set down out conclusions as under :

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

6. In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily reply upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.

7. In the instant case, the petitioner was, admittedly, on bail when the detention order came to be passed and admittedly, the copy of the bail order though referred to in the index at Page-39, but, in fact, has not been supplied to the petitioner. Following the principles laid down in the case of Abdul Sathar Ibrahim Manik (supra), failure to supply the copies of the bail application as well as the bail order would be fatal to the detention order.

In view of the legal position being as stated above, it was necessary for the Detaining Authority to furnish the copy of the bail application as well as the

copy of the bail order to the detenu but, the same has not been supplied despite the reference of the same as stated above.

8. Under the circumstances, the impugned detention order dated 3.12.2003 is liable to be quashed and set aside and the detenu required to be set at liberty.

9. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 3.12.2003 (Annexure-A) passed by respondent no.2 against the petitioner -detenu - Ashokbhai Manubhai Patel is hereby quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)